

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY16 | FY17 | FY18 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

HB 308 allows a "person injured by a criminal offense," who recovers a settlement in a companion civil action, to appear in person or by affidavit before a criminal court to "acknowledge that the injured person has received satisfaction for the injury." Upon such acknowledgement, the court may dismiss the criminal proceedings and bar any further prosecution. HB 308 refers to dismissal of the case as a "compromise."

HB 308 would not apply to the following criminal charges: an act by or upon a peace officer, an act done with intent to commit a violent felony, an act in violation of a court order, and act by or upon a household member, an act upon someone sixty years of age or older, or an act upon someone less than eighteen years of age.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

HB 308 improperly intermingles two very different judicial proceedings with different standards for determining guilt. A criminal action is brought by the state, not by a victim of the crime. The state can prosecute a criminal case even if it goes against the wishes of the victim. Criminal penalties are imposed not only as punishment for the harm the defendant inflicted, but are also intended to protect the public at large by deterring others from violating the law. The sufficiency and severity of the punishment are unrelated to whether the individual victim receives satisfaction from the defendant. A criminal defendant can be convicted only if the state can establish guilt beyond a reasonable doubt.

In contrast, a civil action based on the same facts underlying the criminal case may be brought by a victim or other person with standing regardless of whether the defendant is charged, convicted or acquitted in the criminal case. The purpose of the civil action is to allow an individual victim to obtain compensation or restitution from the defendant. The standard of guilt in a civil action is

much lower, usually requiring only that guilt be proven by a preponderance of the evidence.

As a practical matter, HB 308 would disrupt the criminal adjudication process and would improperly punish similarly situated defendants differently. The state would be forced to delay a criminal prosecution until the conclusion of any related civil case. The civil case could potentially take months or years. Whether a defendant was convicted and punished for one of the crimes covered by HB 308 would depend, unfairly, on matters largely outside the defendant's control. Those matters would include whether the victim elected to file a civil case before the criminal prosecution, whether the victim prevailed in the civil case and whether the victim was sufficiently satisfied with the judgment in the civil case to make an acknowledgement to the court. In effect, whether a defendant ended up with a conviction or dismissal would rest not on the defendant's guilt but on the actions and choices of the particular victim.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Potential conflict with the "Duties of district attorney," as listed in §36-1-18.

TECHNICAL ISSUES

Section 1, A (6) reads "upon someone less than eighteen years of age or younger;" The language "or younger" is duplicative.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS